

**United States Department of Labor
Employees' Compensation Appeals Board**

C.Y., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Portland, OR, Employer

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**Docket No. 09-1341
Issued: January 20, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 28, 2009 appellant filed a timely appeal of a February 4, 2009 decision of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 8, 2008 appellant, then a 29-year-old mail handler, filed an occupational disease claim alleging that he developed right shoulder pain due to his employment activities. He first realized that his employment activities caused or aggravated his right shoulder condition on August 29, 2008. Appellant stopped work on October 27, 2008 and returned on October 29, 2008 to modified duty.

An October 27, 2008 work restriction form from Dr. Charles Wong, a Board-certified internist, diagnosed repetitive use injury of the hands and shoulders. Regarding the type of injury, he checked a box to indicate that it was a “workers’ comp” injury. Dr. Wong advised that appellant could return to modified work on October 28, 2008 with right shoulder restrictions on pushing, pulling, overhead reaching and lifting. Dr. Wong also recommended physical therapy.

In a November 17, 2008 statement, appellant noted that on August 28, 2008 he noticed slight right shoulder pain. He indicated that his job required constantly lifting trays of mail weighing between 10 to 50 pounds and pushing containers weighing up to 500 pounds. Appellant asserted that these work duties caused his alleged right shoulder condition. In a November 24, 2008 statement, appellant’s supervisor indicated that appellant’s job required constant walking and removing trays of mail off a roller bed.

On December 10, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence. In particular, it requested a medical report with a diagnosis and a physician’s opinion regarding how appellant’s federal employment contributed to the diagnosed condition.

Appellant submitted an undated statement describing his activities outside of work and the time he spent on each. He also noted experiencing pain in his right shoulder and feet while working. Appellant reiterated that his job duties required pushing containers weighing about 500 pounds and staging mail at various machines.

A workers’ compensation form from Dr. Wong dated October 27, 2008 reflected appellant’s complaint of slight pain in his right shoulder and hand as well as the fingers on his left hand. He diagnosed repetitive use injury of the shoulder and hands. He indicated no permanent impairment. Dr. Wong also advised modified work beginning October 28, 2008. Also on October 27, 2008, he noted that x-rays of appellant’s right shoulder and right and left hands were negative. In a report of the same date, Dr. Wong noted appellant’s complaint of right shoulder pain from repetitive use. Appellant also indicated that his fingers on both hands locked up. He further reported that 95 percent of his physical activities were work related. Dr. Wong noted that appellant’s work as a mail handler required moving “very heavy items.” He diagnosed repetitive use injury of the right shoulder and right and left third fingers. Dr. Wong discussed repetitive soft tissue injury with appellant and indicated he might be getting trigger finger but that Dr. Wong did not see or feel a pop or snap. A December 9, 2008 physical therapy discharge report noted that appellant was self-discharged and had failed to make more appointments.

In a February 4, 2009 decision, the Office denied appellant’s claim finding that, although the claimed events occurred, the medical evidence was insufficient as it did not provide a diagnosis that could be connected to the identified work activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim

was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.³

ANALYSIS

The record reflects that appellant's job requires repetitive pushing, pulling and lifting trays of mail. Appellant submitted insufficient medical evidence, however, to establish that he has a diagnosed right shoulder condition causally related to these employment activities.

Dr. Wong's October 27, 2008 report noted that appellant's job as a mail handler required moving heavy items and he diagnosed repetitive use injury of the right shoulder and right and left third fingers. Although this report provides some support for causal relationship, Dr. Wong did not provide any rationale explaining how moving heavy items caused or aggravated a diagnosed right shoulder condition.⁴ Dr. Wong also reported appellant's statement that 95 percent of his physical activities were work related; however, neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁵ As Dr. Wong's statement relating appellant's activities to his work duties merely reiterated

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (a medical opinion not fortified by medical rationale is of little probative value); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

⁵ *Ernest St. Pierre*, 51 ECAB 623 (2000).

appellant's opinion on causal relation, it is insufficient to establish his burden of proof. Likewise the doctor's indication on the October 27, 2008 work restriction form that appellant's condition was a "workers' comp" injury is also insufficient to establish the claim as Dr. Wong did not provide any medical reasoning explaining how particular work duties caused or aggravated a diagnosed medical condition.

Other reports from Dr. Wong did not address the issue of causal relationship or indicate whether appellant's job activities caused or aggravated a diagnosed right shoulder condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ In particular, Dr. Wong's October 27, 2008 workers' compensation form report diagnosed repetitive use injury of the hands and shoulders but he did not provide a reasoned opinion on causal relationship or otherwise identify the types of repetitive use activities that contributed to appellant's diagnosed condition. Additionally, Dr. Wong's x-ray interpretation of appellant's hands and right shoulder revealed normal findings and no fractures.

The record also contains a physical therapy report dated December 9, 2008. However, the records from appellant's physical therapist do not constitute competent medical opinion in support of causal relation as a physical therapist is not a physician as defined under the Act.⁷

Consequently, appellant did not submit sufficient medical evidence to establish that he has a right shoulder condition caused or aggravated by his employment activities.

On appeal, appellant asserts that his claim should be accepted as the activities responsible for his right shoulder condition include pushing and pulling trays of mail weighing up to 745 pounds, which caused pressure on his hands, shoulders and feet. However, as noted, appellant has not met his burden of proof to establish his claim because the medical evidence is insufficient in explaining how appellant's employment activities caused a diagnosed right shoulder condition. The Board notes that the Office accepted the employment activities he identified but acceptance of appellant's claim also requires that appellant submit rationalized medical evidence from a physician explaining the relationship between the identified employment activities and a diagnosed medical condition.⁸ As the medical evidence of record did not provide any rationalized opinion on causal relationship, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

⁶ K.W., 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

⁷ A.C., 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008); *see* 5 U.S.C. § 8101(2).

⁸ *See supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 4, 2009 is affirmed.

Issued: January 20, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board